

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NATHAN WENBERG,
Plaintiff,
v.
P. DELVILLAR,
Defendant.

Case No. [13-cv-01951-SBA](#) (PR)

**ORDER VACATING ORDER
ACCEPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE; REOPENING
ACTION; AND SETTING NEW
BRIEFING SCHEDULE**

The Court previously closed this action upon accepting the report and recommendation of Magistrate Judge Nandor Vadas (“the Magistrate”) to grant Defendant’s Motion to Enforce Settlement. Dkt. 80. The Magistrate issued his report and recommendation on January 22, 2016. No objections were filed thereto. Thus, on February 16, 2016, the Court accepted the Magistrate’s report and recommendation and ordered Plaintiff to sign the settlement agreement and release, the stipulation of voluntary dismissal, and to complete the payee data form, in order to effectuate the settlement. Id. Pursuant to the settlement, the Court dismissed this action with prejudice. Id.

On February 18, 2016, the Clerk of the Court received Plaintiff’s “Motion for Extension of Time to Submit Objection to Report and Recommendation (R[&]R) to Settlement.” Dkt. 83.¹ In his motion, Plaintiff claims that he received the Magistrate’s report and recommendation on February 2, 2016. Dkt. 83 at 1, Ex. A. Thus, Plaintiff argues that any objections he had to the report and recommendation would have been due on February 16, 2016. Id. Plaintiff also complains that he “recently endured medical difficulties [sic].” Id., Ex. B. Therefore, he was unable to file a timely objection. Id. at 1. Instead, he has filed the instant motion for an extension of time. Id. The Court notes that

¹ Because this case had been closed two days previously, the Clerk did not file the aforementioned motion. The Court directs the Clerk to file Plaintiff’s motion and mark it as filed on February 18, 2016, the date it was received.

1 Plaintiff did not sign and date this motion. Id. at 2. However, the attached proof of service
2 indicates that another inmate, Artemus Blankenship, assisted Plaintiff in delivering the
3 aforementioned motion to prison authorities for mailing on February 15, 2016—one day
4 before the purported February 16, 2016 deadline.² Id. at 3-4.

5 Plaintiff argues that the delay in his receipt of the report and recommendation,
6 coupled with his health problems, contributed to his inability to file a timely objection.
7 However, in support of his motion, Plaintiff only attaches an envelope from the Clerk
8 bearing his name was stamped “ENTERED FEB 02 2016.” Dkt. 83, Ex. A. Plaintiff
9 neither elaborates on what “ENTERED” means nor explains the reason for the 11-day
10 delay in receiving the Magistrate’s report and recommendation, which was mailed on
11 January 22, 2016. See id. Moreover, the medical records Plaintiff attaches—to serve as
12 proof that he “recently” had health issues—are all from September of 2015. Dkt. 83, Ex.
13 B. Again, Plaintiff does not elaborate on how his health issues from more than four
14 months ago prevented him from filing a timely objection. Therefore, the Court finds that
15 Plaintiff has failed to present sufficient supporting exhibits to explain why he should be
16 excused for his delay.

17 The above notwithstanding, the Court, out of an abundance of caution, will permit
18 Plaintiff additional time to submit his objections to the Magistrate’s report and
19 recommendation. Pursuant to Civil Local Rule 72-2, Plaintiff must title his objections as a
20 “Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge.” The Local
21 Rules further specify as follows:

22 The motion must specifically identify the portion of the
23 magistrate judge’s order to which objection is made and the
24 reasons and authority therefor. The motion may not exceed 5
25 pages (not counting declarations and exhibits), and must set
26 forth specifically the portions of the Magistrate Judges
findings, recommendation or report to which an objection is
made, the action requested and the reasons supporting the
motion and must be accompanied by a proposed order.

27 ² As a pro se prisoner, Plaintiff receives the benefit of the prisoner mailbox rule,
28 which deems most documents filed when the prisoner gives them to prison officials to mail
to the court. See Stillman v. LaMarque, 319 F.3d 1199, 1201 (9th Cir. 2003).

Id. Plaintiff is warned that, in the event he fails to comply with the foregoing, the Court need not consider his challenge to the magistrate's report and recommendation. See Tri-Valley CARES v. U.S. Dept. of Energy, 671 F.3d 1113, 1131 (9th Cir. 2012); ("Denial of a motion as the result of a failure to comply with local rules is well within a district court's discretion."); Grove v. Wells Fargo Fin. Cal., Inc., 606 F.3d 577, 582 (9th Cir. 2010) (upholding district court's denial of motion to tax costs which was not in compliance with the court's local rules).

For the foregoing reasons,

IT IS HEREBY ORDERED THAT

1. The Court directs the Clerk to file Plaintiff's "Motion for Extension of Time to Submit Objection to Report and Recommendation (R[&]R) to Settlement" and mark it as filed on February 18, 2016. Plaintiff's motion is GRANTED. Dkt. 83.

2. The Court VACATES its February 16, 2016 Order Accepting Report and Recommendation of Magistrate Judge (dkt. 82), and the Clerk shall reopen this action.

3. The parties shall abide by the following briefing schedule:

a. No later than **March 31, 2016**, Plaintiff shall file his objection to the Magistrate's report and recommendation in the form of a "Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge." He must **sign and date** his motion.

b. Defendants shall file a response to Plaintiff's motion no later than **fourteen (14) days** after the date Plaintiff's motion is filed.

c. Extensions of time are not favored, though reasonable extensions will be granted. Any motion for an extension of time must be filed no later than **fourteen (14) days** prior to the deadline sought to be extended. The failure to file objections to a Magistrate Judge's report and recommendation within specified time or to request extension of such time waives right to appeal a District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72.

4. This Order terminates Docket No. 83.

IT IS SO ORDERED.

Dated: 3/11/16


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

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Northern District of California